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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 1 1993

IN THE MATTER OF:

TRINITY BROADCASTING OF FLORIDA, INC.,
and
GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75

Miami, Florida

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of:

TRINITY BROADCASTING OF FLORIDA, INC.
and
GLENDALE BROADCASTING COMPANY

Miami, Florida

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The above-entitled matter came on for hearing pursuant to Notice before Judge Chachkin, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on Tuesday, November 30, 1993, at 9:30 a.m.

APPEARANCES:

On behalf of Trinity Broadcasting of Florida, Inc.:

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On behalf of Glendale Broadcasting Company:

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On behalf of the Chief, Mass Media Bureau:

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2 On behalf of S.A.L.A.D.:

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1	I N D E X			
2	<u>E X H I B I T S</u>			
3	<u>TBF</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
4	Exhibit No. 32		433	497 (as noted)
5	Exhibit No. 33	441		
6	Exhibit No. 34	443	449	
7	Exhibit No. 35	450		
8	Exhibit No. 36	453	456	
9	Exhibit No. 101	462		
10				
11	<u>TBF/GLENDALE JOINT</u>			
12	Exhibit No. 2	435	435	
13	Exhibit No. 3	456	457	
14	Exhibit No. 4	457	457	
15				
16	<u>GLENDALE</u>			
17	Exhibit No. 210	458	488	
18				
19	<u>JOINT</u>			
20	Exhibit No. 1	461	461	
21				
22				
23				
24	Hearing began: 9:30 a.m.	Hearing Ended: 4:00 p.m.		
25	Lunch Began: 12:00 p.m.	Lunch Ended: 1:00 p.m.		

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P R O C E E D I N G S

JUDGE CHACHKIN: Let's go on the record. First of all, as to CNN's request to cover Mr. Crouch's testimony, what is the position of Trinity?

MR. TOPEL: Yes, Your Honor, do you want this on the record, because I --

JUDGE CHACHKIN: I have no objection. It could be on the record.

MR. TOPEL: Okay. That's fine. Your Honor, we would oppose the request for cameras in, in this courtroom. We, we believe that would be an experiment and that this is the wrong case in which to conduct an experiment. Initially, there is precedent for the Commission denying such a request. In the Poplar Bluff, Calvary Educational Broadcasting Network, Inc., renewal proceeding, Docket 92-122, a similar request was made to Chief Administrative Law Judge Stirmer --

JUDGE CHACHKIN: Well, there's one big distinction and I spoke to the Chief Administrative Law Judge about it, and the fact of the matter is, in that case a woman who was going to take the pictures -- a woman who was going to televise it just came on the scene at the hearing without making a prior request and it was denied on that basis, that, that she had not made a prior request for it and therefore no opportunity to consider it. Here we do have a prior request, and as far as I know those are the only grounds on which it

1 was denied there. Namely, that there wasn't a prior request
2 made for it. Here, we don't have that situation so I don't
3 think Poplar Bluff is precedent.

4 MR. TOPEL: I'm prepared to address the substance
5 also.

6 JUDGE CHACHKIN: All right.

7 MR. TOPEL: It may not be a literal precedent.
8 There are numerous court cases where similar requests have
9 been denied and there is no rule in this -- in the District of
10 Columbia requiring the approval of such a request. On the
11 merits, Your Honor, we have a number of concerns. First and
12 foremost, this is obviously a very important case, it's a
13 potential death penalty case, disqualification is going to be
14 sought at least by I'm sure Glendale if not other parties, and
15 we think it's extremely important for the witnesses to
16 concentrate only on --

17 JUDGE CHACHKIN: We're talking about one, one
18 person. As far as I know, the only testimony they're
19 interested in is Mr. Crouch as far as the memorandum I got.

20 MR. TOPEL: Okay. Well, if that --

21 JUDGE CHACHKIN: So, we're not talking about
22 witnesses. We're talking about Mr. Crouch.

23 MR. TOPEL: Okay. Well, I have an objection to that
24 also, Your Honor, in, in that to the extent the request is
25 only for Dr. Crouch. It's very unfair to him and

1 inappropriate we think to the proceeding. It conveys a
2 suggestion that he is somehow a different character of witness
3 than all other witnesses and puts him in the context of
4 testifying in a different setting and a different atmosphere
5 than every other witness. In addition, with respect to him or
6 any other witness, there is a large potential for distraction.
7 There is the obvious activity of camera people and what's
8 going on with the camera. It's an outside intrusion into the
9 substance of the case. There are -- is the potential for
10 attempts to conduct interviews during breaks and I think it's
11 very unfair to the witness to have to deal with those
12 distractions. I would also say, frankly, Your Honor, that,
13 that I feel the same way myself as counsel. We have important
14 business to do here, we want to concentrate on doing our
15 business and not have to deal with camera crews, camera
16 angles, what people may be saying to the camera. So, we think
17 this is a poor case in which to conduct a -- an experiment and
18 have news cameras in the Commission hearing room.

19 A final concern that we have is one that was
20 generally alluded to in a letter that Mr. Honig wrote to you,
21 and I want to avoid any occasion for recurrence of that kind
22 of an issue. And that is that the Trinity Network is a well-
23 known network and Dr. Crouch is well known to his followers
24 and there are a very number of them. The broadcast of his
25 testimony conceivably could create a lot of correspondence to

1 the Commission both from his supporters or from his opponents.
2 Now, we as, as we indicated when Mr. Honig raised the possible
3 issue of intimidation or prejudice, we indicated that, that
4 there has been an, an effort to suppress that from happening
5 on our part and we would like to continue that. We're
6 concerned that if that is the result of a news broadcast that
7 it could prejudice the Commission's consideration of the
8 issues at one level or another, or at least could potentially
9 prejudice the consideration of the issues. And we do not want
10 to create a situation where there's a potential for prejudice,
11 or if that sort of incident occurs that we're held responsible
12 for it. People can go ahead and do things, they'll see
13 comments, they'll see interviews, and we think the, the far
14 more prudent course is to try this case like every other case
15 so that there's no indication that one witness has been
16 treated differently than any other witness, there's no
17 indication that there have been outside factors that could
18 have distracted a witness or affected the, the presentation of
19 evidence, and, and that, that we try this case the way it's
20 supposed to be tried, in this courtroom.

21 JUDGE CHACHKIN: Well, you know, the exact same
22 arguments could have been made in every state court which has
23 allowed -- which allowed the cameras in. Distractions, the
24 fact that it may, it may stir up people watching the show,
25 watching the, the trial, the fact that camera crews will cause

1 a distraction and we're not even talking about -- we don't
2 have a jury trial here so certainly we don't have that problem
3 here we would have in a jury trial. And apparently the courts
4 -- the federal courts and the state courts have taken the view
5 -- I don't know about the federal courts -- the state courts
6 have taken the view that it still benefits the public interest
7 to have televising of court proceedings. So, I don't know how
8 I'm going to come down on this, but I'm just telling -- the
9 same argument your made -- you've made are arguments which
10 have been made and rejected over and over again.

11 MR. TOPEL: Well, Your Honor --

12 JUDGE CHACHKIN: I don't know why -- and it would
13 seem here there would be less possibility of, of affecting the
14 hearing since we don't have a jury here as you do in, in
15 criminal proceedings -- state criminal proceedings. So --
16 Mr. Cohen?

17 MR. COHEN: Your Honor, you anticipated me. My
18 notes -- I was going to say essentially what you said. I
19 would just add one thing. I think that, that the arguments
20 you've heard are very speculative in that if there is any
21 potential for abuse you have the power to control the
22 proceeding. And if the parade of horrors that we heard from
23 Mr. Topel happens, and I don't think it will, then, then you
24 can order the cameras out of the hearing room. So, this is
25 not a situation where, where you lack control.

1 JUDGE CHACHKIN: The Bureau have any -- go ahead,
2 Mr. Honig.

3 MR. HONIG: First, I appreciate Trinity's counsel
4 addressing this question of possible intimidation which
5 obviously does concern S.A.L.A.D. as well. I don't foresee,
6 however, any additional potential for intimidation resulting
7 from camera coverage. I have some experience with the matter
8 of how CNN handles courtroom trials because I'm from Florida
9 and of course they have covered a number of fairly notorious
10 jury trials in Florida, the William Kennedy Smith trial, the
11 Lazano trial in which I had a minor role being among the, they
12 have always conducted themselves in a manner which was
13 discrete, which was responsible and which even in a jury trial
14 situation I think created no prejudice. Here we have a
15 witness who certainly is accustomed to appearing before
16 cameras. He therefore has had long experience in not being
17 distracted by cameras. The fact that there is presently only
18 a request to examine that one witness I think is irrelevant to
19 the merits of the, the issue of whether cameras should be
20 allowed generally. If they're allowed, I think they ought to
21 be allowed for all witnesses and it's up to the journalistic
22 discretion of the journalist to decide who if anyone to cover.
23 That's not the Commission's responsibility.

24 Finally, I think there is an important public
25 interest question here which is easily missed. Since

1 deregulation there are very few hearings on renewals of
2 licenses. The public has very few opportunities to learn how
3 the Commission operates, and indeed most members of the public
4 are even unaware that the airwaves are held by broadcasters
5 for them as a public trust. This is if nothing else a
6 valuable opportunity for the public to learn how the
7 Commission operates. Since the Commission has primary
8 jurisdiction for regulation of television, I think it would be
9 highly appropriate that the Commission show the same respect
10 for the industry it regulates when it regulates it when it
11 comes before the expert agency as a journalist seeking to
12 perform its functions.

13 JUDGE CHACHKIN: The Bureau have any comments on
14 this?

15 MR. SCHONMAN: Your Honor, the Bureau as it stated
16 yesterday has no objection to the news coverage -- of
17 television coverage at this proceeding so long as the coverage
18 does not disturb or -- does not disturb the, the events that
19 are going on here. In that respect, the Bureau concurs with
20 the comments made by Mr. Cohen and Mr. Honig.

21 JUDGE CHACHKIN: Well, I, I have attempted to find
22 out if there is any policy the Commission deals with
23 television of the proceedings, and what I've been able to
24 learn is there is no policy. Apparently it rests with the
25 discretion of the presiding judge. And I intend to contact

1 CNN and find out exactly what they have in mind and if they
2 can demonstrate to me that they could do this in, in a
3 discrete manner which would not disturb the proceeding, my
4 inclination is to allow such televised -- however, I have to
5 speak to them and find out exactly what they have in mind.
6 All right. Let's --

7 MR. TOPEL: Your Honor, may I, may I make two
8 follow-up points?

9 JUDGE CHACHKIN: Yes. Go ahead.

10 MR. TOPEL: One is that this -- appeals from the FCC
11 generally go to federal courts and I'm not aware that the
12 federal courts permit cameras in, in their proceedings. And I
13 understand Your Honor indicated that it has been permitted in
14 some instances and that's certainly true, but it certainly has
15 not been universally permitted. There certainly is, is
16 conflict as to, as to whether or not it's proper and, and I
17 would just indicate particularly where a single witness is
18 being singled out, I think Your Honor's ruling should, should
19 tilt toward the side of assuring that there's no possible
20 prejudice to the proceeding. And if, if only Dr. Crouch is
21 going to have to deal with reporters when he testifies, both
22 cameras, lights, so on and so forth, possible requests to
23 interview him, I would think that would be very unfair.

24 JUDGE CHACHKIN: Well, in the first place, there's
25 nothing preventing the press from coming into the hearing room

1 right now and requesting to interview anybody. Obviously, Dr.
2 Crouch or anyone else could refuse an interview request. What
3 we're talking about is televising a portion of the proceeding
4 so I don't see your concern about interviews as anything to do
5 with television the portion of the proceeding.

6 MR. TOPEL: Well, I would respectfully submit, Your
7 Honor, the likelihood is much greater if, if they are here
8 with a camera crew and reporters filming, the likelihood is
9 much greater. And I -- we certainly have no objection to
10 their bringing reporters in and observing the proceedings and
11 reporting it as news.

12 JUDGE CHACHKIN: Well, as I say, I -- we're -- no
13 policy which precludes broadcast televising the proceedings.
14 I've known cases where, where -- I've been involved in cases
15 where a television crew would come but merely film the
16 participants and that's all they would do, they would not film
17 the questions and answers and I know that's gone on. And I
18 also am aware that there have in fact been televising of, of
19 proceedings -- portion of proceeding. I don't know if it was
20 at the consent of all the parties or what, but it has
21 happened. This is not something novel. Again, my intention
22 is to contact the CNN official who made the phone call and
23 find out exactly what he has in mind. And if I'm satisfied it
24 can be done in a discrete, responsible fashion without
25 affecting or prejudicing of parties in this proceeding, then

1 my inclination is to allow it. But I'm not in a position to,
2 to advise you what I will do until I actually speak to Mr.
3 Meilhan, is the name I was given, of CNN.

4 All right. Let's go on to another matter. The
5 second matter that we -- had come up is the question of what
6 constitutes the appropriate renewal period.

7 MR. EMMONS: Your Honor, reviewed a great number of
8 cases and, and I have copies of those if you'd like them and,
9 and I can give you the citations certainly. All of them that
10 I've found establish the proposition that the, the relevant
11 renewal period is the license term that ends on the last day
12 prescribed in the Commission's rules for the licenses for that
13 particular state and class of service. The most recent case
14 is again the Fox Television case where the Review Board in its
15 decision last March of this year said in Footnote 3 that the
16 license term under scrutiny expired November 30, 1988, which
17 was the last day of license term for California televisions
18 stations. The competing application of course in that case
19 had been filed on November 1, a month earlier. In the initial
20 decision in that case, the decision also recites that the
21 relevant period on which to evaluate Fox's performance begins
22 on the date that Fox acquired the station from Metro Media and
23 ends on November 30, 1988.

24 The next preceding case chronologically that I'm
25 aware of, of renewal -- comparative renewal decision was the

1 Metroplex case. There likewise the -- in that case it was a
2 one-year term by reason of a previously granted short-term
3 renewal of one year. The one-year term had been specified as
4 being December 20, 1985 to December 20, 1986. The initial
5 decision recites that the competing application was filed on
6 October 30, 1986. And then the decision goes on to say that
7 for purposes of determining Metroplex's entitlement to a
8 renewal expectancy, the presiding judge ruled that the
9 relevant time period was the one-year period of the station's
10 most recently granted license term, December 20, 1985 to
11 December 20, 1986. That was in effect ratified by the Review
12 Board decision in the same case issued in November 1989 which
13 in Footnote 3 stated that the license term performance of the
14 station for purposes of renewal expectancy was the period
15 beginning December 20, 1985 and running to that same date in
16 1986.

17 Prior to Metroplex, the Commission issued a decision
18 in January 1988 in the Video 44 Chicago license renewal case,
19 and in paragraph 3 of its decision described the license term
20 as being 1979-1982 license term and in the footnote said this
21 term expired December 1, 1982, which was the last day under
22 the rules for the license term for Illinois television
23 stations.

24 Prior to that, in the Pillar of Fire, a New Jersey
25 radio case, in that decision the initial decision in May 1984

1 | cited, in fact in a program -- in a, in a heading preceding
2 | its discussion of the renewal expectancy issue it would be --
3 | the decision defines the license period as June 1, 1978
4 | through May 31, 1981, again, going to the last day of the
5 | term. Notwithstanding of course as is always true that the,
6 | that the competing application was filed as it has to be under
7 | the rules at least one month before the end of the term.

8 | And finally, Mr. Honig yesterday cited the case of
9 | National Black Media Coalition and I appreciate his citing
10 | that. Perhaps he ought to have read it more carefully. The
11 | court there was discussion Commission policy and in that case
12 | there had been -- the license term in question expired on
13 | November 30, 1982. The court recites that on November 1,
14 | 1982, the National Black Media Coalition had filed a petition
15 | to deny the application, there's an extensive discussion of
16 | Commission policy about what the relevant term is, and the
17 | court concludes that, and I'll quote, "There's no improvements
18 | occurring after the end of the 1982 term. November 30, 1982
19 | should have been considered." The issue in that case was
20 | whether licensee performance in the ensuing three years after
21 | the term had ended could be considered in mitigation. In
22 | other words, post-term upgrading as it was called. In our
23 | case, we're not talking about post-term at all, and we're not
24 | talking about any evidence of upgrading by, by the licensee
25 | during the period. So, all of those authorities I think very

1 | firmly establish that the appropriate license renewal term is
2 | February 1 of 1987 to February 1 of 1982, in our case today.

3 | JUDGE CHACHKIN: I notice you didn't cite
4 | Continental Radio, Inc., which appears to state something
5 | different. It appears to indicate, citing George E. Cameron
6 | and Cromwell Broadcasting Company, that while apparently the
7 | end of the license term is considered, reading from the
8 | Board's decision, "We believe that program evidence accruing
9 | after the filing of the competing application is post litem
10 | mortem and thus entitled to reduce weight," citing Cameron.

11 | MR. EMMONS: Well, I have two things to say about
12 | that, Your Honor. One is I think if anything that's been
13 | superseded by -- certainly the Commission in Video 44 was very
14 | clear about it and all the other cases, the Review Board in
15 | the Fox case was very clear about it. The second point I'd
16 | want to make is that the -- as you've just quoted from
17 | Intercontinental Radio, the -- I didn't hear that as excluding
18 | as irrelevant.

19 | JUDGE CHACHKIN: Well, I agree with you, it doesn't
20 | exclude it, but it says it's entitled to reduced weight.

21 | MR. EMMONS: The third point I'd want to make is
22 | that where there is -- unless there's evidence that the
23 | licensee sought to upgrade its performance after the filing,
24 | filing of the competing application, it ought to be given
25 | equal weight to what preceded it. There is no evidence I

1 don't think in, in this case that Trinity sought to upgrade
2 its programming performance or otherwise its public service
3 performance after Glendale filed its application on December
4 27, 1989. And indeed, there's nothing in the record, and I
5 couldn't tell you when Trinity even learned that that
6 application had been filed.

7 JUDGE CHACHKIN: So, Glendale filed their competing
8 application December 27, 1989. Is that --

9 MR. SCHAUBLE: 1991.

10 JUDGE CHACHKIN: 1991?

11 MR. EMMONS: I'm sorry, 1991.

12 JUDGE CHACHKIN: And when did the license term end?

13 MR. EMMONS: February 1, 1992, so about a month and
14 four days later.

15 JUDGE CHACHKIN: Well, my, my --

16 MR. SCHAUBLE: Your Honor, we have a -- Your Honor?

17 JUDGE CHACHKIN: You have a response? Go ahead.

18 MR. SCHAUBLE: Yes, Your Honor. We think the cited
19 by -- to our knowledge, the cases cited by Mr. Emmons did not
20 specifically deal with this point to recite what the license
21 term was. But so far as I'm aware, none of these cases deal
22 directly with the issue of, of what weight if any can be given
23 to programming that took place after the, after the filing of
24 the competing application when there is a, when there is an
25 objection on that basis. And we think the applicable case is

1 the Commission's decision in the RKO General case and the
2 WNAC-TV Boston case which is 24 R. 2d. 411, where the
3 Commission held, "Under the present circumstances, where the
4 licensee has had a full license term, we are convinced that
5 the probative value of any evidence of programming occurring
6 after notice is given that the renewal application is in
7 jeopardy is so small in comparison to the weight to be put
8 upon the licensee's actual performance during the license term
9 that no useful purpose would be served by permitting it to be
10 included in the record." And here Trinity has had four years
11 and eleven months to develop its, its record and I think under
12 the Commission's policy as articulated in the RKO/Boston case
13 that any programming that took place after the filing of
14 Glendale's competing application would be entitled to no
15 weight whatsoever.

16 MR. EMMONS: Well, that certainly wasn't the policy
17 that the Commission followed in Video 44 or that the Review
18 Board followed in the Fox case or that was followed in the
19 other cases I cited, Your Honor.

20 MR. SCHAUBLE: Your Honor, I, I haven't seen
21 anything which shows a specific -- that the Commission
22 specifically considered that particular question. The fact
23 that the Commission recited what the license term is, is not a
24 statement that the Commission specifically considered the
25 programming after the filing of the competing application or

1 that that was even a matter of, of any dispute or objection on
2 the part of the challenger in that case.

3 JUDGE CHACHKIN: Well, what I'm going to do is I'm
4 going to receive in evidence the, the date set forth in the
5 exhibit. However, the parties could argue at the time of
6 findings whether or not it's entitled to reduced weight or no
7 weight. I haven't had a chance to look at the precedent cited
8 by Trinity. I do have in front of me however the Board's
9 decision in Intercontinental which appears to indicate -- that
10 some cases seem to indicate while it's generally recognized
11 that the pre-challenge license is generally the most reliable
12 indicator of future performance, the cases cited by the Board
13 seem to indicate that they may be entitled to some weight
14 although reduced weight if it's after there has been a
15 challenge. And in light of that fact, I am prepared to
16 receive it and the parties can argue the relevant weight of
17 any material which came -- which deals with programming after
18 the, the time that Glendale filed its completing application
19 since I don't think it's completely clear. I know you cited
20 RKO, but this case is a 1984 case and the Board in their
21 summary of prior cases seems to indicate -- it seems to me
22 that the presiding judge should allow it in with the
23 understanding that it may be entitled to little or no weight
24 in, in considering the licensee's performance, and that's what
25 I propose to do.

1 All right. The next question we're dealing with I
2 guess is the situation involving where we go with this
3 exhibit. And that's -- what do you propose to do? Do you
4 propose to bring someone down who's going to attempt to
5 qualify the -- what was done in establishing the -- this --
6 the composite week?

7 MR. EMMONS: Yes, Your Honor, we, we are working on
8 that. The, the person in question we could not reach
9 yesterday because he was off yesterday but we're working as
10 expeditiously as we can on that.

11 JUDGE CHACHKIN: Do I understand that you have
12 provided data as to nonentertainment program at the station?

13 MR. EMMONS: No, I don't think we have, Your Honor,
14 not nonentertainment programming.

15 JUDGE CHACHKIN: Nonentertainment.

16 MR. EMMONS: That's what I say. We -- the composite
17 week does not include any category that is an entertainment
18 category program.

19 JUDGE CHACHKIN: I, I didn't say that. I said --
20 the Commission in determining whether you're entitled to
21 renewal preference looks to see if the nonentertainment
22 programming of the station -- broken down between news, public
23 affairs and nonentertainment. Have you made that -- those,
24 those statistics in, in the, in the -- in your evidence --

25 MR. EMMONS: Well, all the evidence we have --

1 JUDGE CHACHKIN: -- of those three categories?

2 MR. EMMONS: -- submitted are nonentertainment
3 categories. We have not submitted any evidence that covers an
4 entertainment category.

5 JUDGE CHACHKIN: I understand that. So, you've
6 taken the composite week you've said and relying on the
7 material in the composite week you've come up with statistics
8 discretely showing news, public affairs and other
9 nonentertainment programming?

10 MR. EMMONS: Yes. The categories in the exhibit are
11 -- this would be found at page 5 of Exhibit 35. Religious,
12 public affairs/other, instructional/religious,
13 religious/public affairs, public affairs/news, instructional,
14 news, and PSA.

15 JUDGE CHACHKIN: Well, what's the relevance of, of
16 these categories? Religious, public affairs/ -- what --
17 that's not what the Commission looks at. The Commission looks
18 at news, public affairs and overall nonentertainment.

19 MR. EMMONS: Well, that --

20 JUDGE CHACHKIN: You've, you've somehow set up
21 categories that the Commission has never considered.

22 MR. EMMONS: Well, these, these programs according
23 to the categories have public affairs content or news content
24 or instructional content.

25 JUDGE CHACHKIN: Well, the Commission --

1 instructional would come under nonentertainment. There are
2 broad categories that the Commission considers, news, public
3 affairs, three discrete categories, and nonentertainment
4 programming generally which is other than entertainment and
5 sports -- now, have you set it up in that way so that it could
6 be considered?

7 MR. EMMONS: Well, we haven't called it
8 nonentertainment but by the -- by, by the category
9 descriptions, they are what the Commission has always regarded
10 as nonentertainment.

11 JUDGE CHACHKIN: But you have religious/public
12 affairs.

13 MR. EMMONS: Well, that, that --

14 JUDGE CHACHKIN: Religious is not public affairs.

15 MR. EMMONS: No, but that indicates that, that
16 programming in that category had a component of either, had,
17 had, had a component of public affairs and a component of --

18 JUDGE CHACHKIN: But how do you come up with your
19 percentages? What, what component of public affairs is
20 reflected in your percentages and what component of -- and
21 nonentertainment is reflected --

22 MR. EMMONS: Well, other is nonentertainment so
23 anything that isn't public affairs is by definition
24 nonentertainment.

25 JUDGE CHACHKIN: Well, what, what is

1 religious/public affairs? What does that mean?

2 MR. EMMONS: That means that, that a portion of the
3 program had a religious content and a portion of the program
4 had public affairs content.

5 JUDGE CHACHKIN: Well, the portion that had
6 religious programming is, is not public affairs.

7 MR. EMMONS: No, but it's not entertainment either.

8 JUDGE CHACHKIN: I understand that, but it comes un-
9 - overall nonentertainment, but it's not public affairs. I --
10 what I want was discrete information as to the amount of news,
11 the amount of public affairs and the amount of
12 nonentertainment programming which by the Commission
13 definition means other than entertainment and sports.

14 MR. SCHAUBLE: Your Honor, I think this points out
15 some of the problems. We have, we have -- not only do we have
16 these, these hybrid categories here, but we also have -- as,
17 as I mentioned yesterday, we also seem to have problems as to
18 how some of the programs are categorized.

19 JUDGE CHACHKIN: Well, we can get to that. Well, I
20 assume someone's going to testify and tell us how programs are
21 categorized and if they've been categorized in a way which is
22 not consistent with the Commission's definition obviously we
23 have a deficiency which would affect the viability of the
24 exhibit. I don't know the answer to that. I assume that's --
25 well, someone is coming from California to explain to us.

1 MR. SCHAUBLE: Your Honor, can we set up some sort
2 of schedule for when this, this -- as to when, when we'll have
3 the testimony, when this will -- and when this examination
4 will be taking place?

5 JUDGE CHACHKIN: Well, what I propose to do is, is
6 not to rule on, on the composite. We can log evidence with
7 the holder ruling until material is qualified. Now, do you
8 have any idea when this individual is going to be able to
9 testify? I don't -- do you propose to -- you don't propose to
10 call any witnesses -- you didn't propose to call any witnesses
11 with respect to your programming showing -- with respect to
12 your renewal expectancy. Is that --

13 MR. EMMONS: Well, we presented the written
14 testimony of Mr. Everett and, and Ms. Downing and Ms. Dressler
15 and as it's turned out none has been called for cross-
16 examination. We do have some stipulations which I'll be
17 offering later, Your Honor.

18 JUDGE CHACHKIN: I understand that. But so I assume
19 before you get on to your testimony regard -- to the issues
20 added by the Commission, you want to put this individual on
21 and then move on to the other issues?

22 MR. EMMONS: We could do that, Your Honor, or --

23 JUDGE CHACHKIN: I assume he'll be your first
24 witness -- what I'm saying.

25 MR. EMMONS: We'd -- I think in your pre-hearing